An EDICT in the *Roman Law*:

In the 25. Book of the *Digests*, Title 4. Section 10.

As concerning the visiting of a

Big-Bellied Woman,

And the looking after what may be

Born by Her.

The *Pretor* says thus;

§ 10. De inspiciendo ventre, custodiendoque partu, sic Prætor ait: 'Si mulier 'mortuo marito prægnantem se esse dicet, 'his ad quos ea res pertinebit, procuratorive eorum, bis in mense denunciandum 'curet, ut mittant, si velint, quæ ventrem 'inspicient. Mittantur (autem) mulieres 'liberæ duntaxat quinque; hæque simul 'omnes inspiciant: Dum ne qua earum, 'dum inspicit, invita muliere ventrem 'tangat. Mulier in domo honestissimæ 'fœminæ pariat, quam ego, constituam. 'Mulier ante dies triginta, quam parituram se esse putat, denunciet his ad quos ea res pertinet, procuratoribusve eorum, ut mittant, si velint, qui ventrem custodiant. In quo conclavi mulier pariturus erit, ibi ne plures additus sint, quam unus: fierunt, ex utraque parte tabulis præfigantur. Ante ostium ejus conclavis liberi tres, & tres liberæ cum binis comitibus custodiant. Quotiescunque ea mulier in id conclave, aliudve quod, sive in balineum ibit, custodes, si volent, id ante prospiciant; & eos qui introierint, excutiant. Custodes, qui ante conclave positi erunt, si volunt, omnes, qui conclaverant domum introierint, excutiant. Mulier, cum parturire incipiat, his ad quos

'*If a* Woman *upon her* Husband's *death* 'pretends that she is with Child, she must in-'timate that twice every Month thereafter, to 'those who are the most concerned in it, or to 'their Proxies, that so they may send some, if 'they think fit, to visit her Belly. They may 'send any Free Women (i.e. not Slaves) to the 'number of five as most; and all these together 'may visit her, provided that while they do it, 'none of them may touch her Belly, without her 'leave. She shall be lodged in the House of some 'Woman of an unstained Reputation, such as 'shall be named by the Pretor: and she shall 'signifie to the Persons *concerned*, or to their 'Proxies thirty days before, when she expects 'to be delivered, that if they think fit, they 'may send such as may watch over her. The 'Room in which she is to be brought to Bed, 'shall be visited, that there may be no other 'Entries to it but One; and if there are any 'other, care must be taken to nail them up with 'Boards laid along both within and without: 'and in the Door of the Bed-Chamber three 'Free Men, with as many Free Women, and two 'Servants may be set to watch: as often as the 'Woman shall think fit to go into that Bed-Cham-'ber, or into any other, or into a Bath, which 'those keepers may visit, if they think fit, before 'she goes into it, and may also visit all that go

ea res pertinet, procuratoribusve eorum denunciet, ut mittant quibus præsentibus pariat. Mittantur mulieres liberæ duntaxat quinque: ita ut, præter obstetrices duas, in eo conclavi ne plures mulieres liberæ sint, quam decem, ancillæ quam sex. Hæ, quæ intus futuræ erunt, excutiantur omnes in eo conclavi, ne qua prægnans sit. Tria lumina, ne minus, ibi sint: scilicet, quia tenebræ ad subjiciendum aptiores sunt. Quod natum erit, his ad quod ea res pertinet, procuratoribusve eorum, ostendatur. Apud eum educatur, apud quem parens jusserit. Si autem ne his parens jusserit, aut is, apud quem voluerit educari, curam non recipiet, apud quem educetur, causa, cognita constituam. Is, apud quem educabitur quod natum erit, quoad trium mensium sit, bis in mense ex eo tempore; quoad sex mensium sit, semel in mense; a sex mensibus quoad anniculus fiat, alternis mensibus; ab anniculo quoad fari possit, semel in sex mensibus, ubi volet, ostendat. Si cui ventrem inspici, custodirive, adesse partui licitum non erit, sed tumque quid erit quominus ea ita fiant, uti supra comprehensum est. Ei, quod natum erit, possessionem causa cognita non dabo; sive quod natum erit, ut supra cautum est, inspici non licuerit. Quas itaque actiones me daturum pollicetur his, quibus ex Edicto meo Bonorum possessio data sit eas, si mihi justa causa videbitur esse, ei non dabo.

'into it at that time; and those Keepers may also, 'if they think fit, search all such as come within 'the House or the Bed-chamber. When the 'Woman falls in Labour, she shall give notice of it to those concerned, or to their Proxies; that so they may send such Persons who 'may be Witnesses to the Birth; who must be 'Free Women, to the number of five at most; 'and besides the Two Midwives, there must 'be no more Free Women in the Bed-chamber, 'than Ten; nor more Servants than Six. All 'these who enter within the Bed-chamber, 'shall be visited in the Room, to see if any of 'them is with Child: nor must there be fewer than three Lights in the Room, because an 'Imposture may be more easily committed in 'the dark. That which is born, shall be shewed 'to those who are concerned, or to their 'Proxies, if they desire it. The Infant is to be 'kept by him who is named by the Father for that 'intent; but if he has left no Orders concerning 'it, or if he who was named by him will not undertake it, the Prætor having examined the 'matter, shall name the Person to whose keeping the Child is to be trusted; whose name 'shall be published, and he shall be obliged to 'shew him, as he thinks fit, twice a Month, till 'he is three Months old, and after that once a 'Month, till he is six Months old, and once 'in two Months, till he is a year old; and 'from thence once in six Months, till he can 'speak. But if any will not suffer their Belly to be visited, nor themselves to be watched, nor admit of Witnesses to their delivery, or if any thing is done for hindring 'the execution of those things that are 'hereby provided, when upon the hearing of the matter that is made out, that which is born, is not to be admitted to the possession of the Estate; if it be found that the 'Child has not been visited, according to the former regulations; in which case the 'Prætor promises to give over all Rights and Titles to those others, whom according to his 'Edict he has put in Possession, and not to the Child that is so born, the Justice of the 'cause being first made out to him.

§11. Quamvis sit manifestissimum Edictum Prætoris, attamen non est negligenda interpretatio ejus. §12. Denunciare igitur mulierem oportet his scilicet, quorum interest partum non edi, vel totam habituris hæreditatem, vel partem ejus, sive ab intestato, sive ex Testamento. §13. Sed & servus hæres instituetur fuerit, si nemo alius hæres Aristo scribit, hic quoque servo,

11. Altho' the Prætors Edict is very express, yet the Explanation of it is not to be passed over. 12. The Woman is bound to intimate her being with Child, to all those who are concerned in it, and to all others to whom either the whole Inheritance or a part of it belongs, whether by the succession in the course of Law, or by the Will of the Dead. 13. And even if a Slave is made Heir by the Will, there being no Child, Aristo writes, quem

quamvis non omnia, quædam tamen circa partum custodiendum arbitrio Prætoris esse concedenda. Quam sententiam puto veram; *publicè enim interest, partus non subjici: ut ordinum dignitas, familiarumque salva sit.* Ideoque etiam servus iste, cum sit in spe constitutus successionis, qualis qualis sit, debet audiri, rem & publicam & suam gerens.

that the Prætor *ought, according to his discretion, to give him some, though not all those priviledges of watching over the birth; in which I think he is in the right*: For it is of publick concern, that there should be no suppositious Births; and that the Dignity of Families, & of the different ranks of men, be preserved entire. *And that therefore even this* Slave, *who is put in the hope of the Succession, should be heard, how mean soever his condition may be, since the* Publick is concerned *in that which he looks after, as well as he is as to his own particular.*

§ 14. Denunciari oportet his, quos proxima spes successionis contingit; ut puta primo gradu hæredi instituto; non etiam substituto: &, si intestatus pater familias sit, his, qui primum locum ab intestato tenent: si vero plures sint simul successuri, omnibus denunciandum est. § 15. Quod autem Prætor ait, *causa cognita se possessionem non daturum, vel actiones denegaturum*, eo pertinet, ut si per rusticitatem aliquid fuerit omissum ex his, quæ prætor servari voluit, non obsit partui. Quale est enim, si quid ex his, quæ leviter observanda Prætor edixit, non sit factum, partui denegari bonorum possessionem? Sed mos Regionis inspiciendus est, & secundum eum & observari ventrem, & partum, & infantem oportet.

14. *The matter ought to be intimated to* those *who are the next in the* Succession; *but not to those who come after them in the entail: but if the* Father *died without a Will, then it must be intimated to those who succeed immediately to the defunct: and if there are many Heirs Portioners, it must be intimated to them all.* 15. *As for that Clause, in which the* Prætor *says, that upon the* hearing of the Cause, *he will not put the Child in possession, and that he will not give him leave to sue for it: by this (of hearing the Cause) is to be understood, that if by a clowniſh simplicity some of those things have been neglected, that the* Prætor *has appointed to be observed, this must not turn to the prejudice of the Child; for what reason is there, that if any of those things have been omited, which the* Prætor *has order'd to be slightly observed, that then the Possession of the Estate should be denied to the Child? But a regard is to be had to the* Custom of the Country; *and according to that, both the* Big-Belly, *the* Birth, *and the* Child, *are to be visited and watched over.*

It seems that the Abuse *provided against by this Law, was known among the* Athenians; *for it is set forth among their other Disorders by* Aristophanes, *in the following words.*

Aristophanes in his *Thesmophoriazusæ.*

'I knew another Woman, who said that she was in Labour, and pretended to have had her Pains 'for the space of ten days, till she had bought a Child; mean while the Husband was running about 'to all places, buying those Remedies that hastened Labour. But an Old Woman brought in a Pot 'a Child to her, the Mouth of which she had shut up carefully with Wax, that so it might not cry 'out; and as soon as she had made a Sign to the Woman, intimating what she had brought to her, 'she that pretended to be in Labour, cried out to her Husband, Get you gone, get you gone, 'Husband; for I am now upon the point to be brought to bed, and I feel the Child, 'kicking with his Heels ready to break out. Upon this he in great joy withdrew, and 'presently the Old Woman plusk'd out of the Child's mouth that Wax with which she had stopped 'it; upon which that cursed Woman that had brought in the Child run out with great joy to the 'Husband, and said, You have a Son born that looks like a Lyon, like a Lyon; and that is your 'very Image in all things. —— What follows, is too immodest to be translated.

Concerning the Interpretation of Laws, and that they ought to be expounded not strictly by the Words or Cases put in them, but by the Equity and Reason of them, Cicero *writes thus; lib.* 2. de Inventione.

Causæ

Causæ & rationes afferentur, quare & quo consilio, sit ita in lege: ut sententia & voluntate scriptoris, non ipsa solum Scriptuæ causa, confirmatum esse videatur. — Legis Scriptorem, certo ex ordine, Judices certa ætate prædictos, constituisse; ut essent non qui scriptum unum recitarent, quod quivis puer facere posset, sed qui cogitationem assequi possent, & voluntatem interpretari. — Nullam rem neque legibus, neque scriptura ulla, denique ne in sermone quidem quotidiano atque imperiis domesticis, recte posse administrari si unusquisque velit verba spectare, & non ad voluntatem ejus qui verba habuerit accedere. Judex is videtur legi obtemperare, qui sententiam ejus, non qui Scripturam sequatur. —— Leges in concilio scriptoris, & utilitate communi, non in verbis consistere. —— Idcirco de hac re nihil esse scriptum, quod cum de illa esset scriptum, de hac is qui scribebat, dubitaturum neminem judicabat. Postea multis in legibus, multa esse præterita, quæ idcirco præterita nemo arbitretur, quod ex cæteris de quibus scriptum sit, intelligi possint.

Let the Grounds and Reasons be shewed, that it may appear upon what design the Law was so and so made; that so it may appear what is enacted not only from the words of the Law, but from the will and design of the Law-giver. —— The Law-givers have ordained Judges to be chosen out of a certain rank of Men, and of a determined age, that so there might be Persons appointed, who should not only repeat the Letter of the Law, which any Child may do, but should be able to find out the design of the Law-giver, and explain it according to his will. — If one will only have regard to the Words, and not to the Mind of him that utered them, it will not be possible to order matters aright, neither by Law, nor by any sort of Writing, nor indeed by any sort of Discourse; and this will appear in the whole business of the World, and even in Domestick Matters. —— That Judge obeys the Law more, who pursues the design of it, than he who has regard only to the words of it. Laws consist not in the words in which they are conceived, but in the intent of the Makers of them; and are to be explained by the good of the Publick for which they are made. Nothing is specified in the Law concerning such a case, because the Law-giver, who mentioned another case in the Law, could not but conclude, that the one being expressed, no body could doubt of the other. For after all, there are many cases that seem to be omitted in many Laws, which yet we ought not to think omitted; because we may easily see what we ought to think of them from those cases that are mentioned in the Law.

The greatest part of his Oration for Cæcina, is to the same purpose; and among many others, these words are remarkable.

Cum voluntas, & consilium, & sententia interdicti, intelligatur, impudentiam summam, aut stultitiam singularem putabimus in verborum errore versari, rem & causam & utilitatem communem non relinquere solum, sed etiam prodere. —— Juris igitur retineri sententiam, & æquitatem plurimum valere, oportere, an verbo ac litera jus omne torqueri, vos statuite utrum utilius esse videatur?

When we once comprehend the Reasons, the Design, and the Intent of a Law, it is either great Impudence, or great Folly, to let our selves be misled by any ambiguity in the words; for this is not only to forsake but to betray the true Ends of the Law, and the good of the Publick. — Do you therefore that are the Judges consider which is best: Whether the Design of the Law ought to be observed, and to be explained according to Equity, or whether Justice it self ought to be perverted by adhering to the Words and Letter of the Law.

FINIS.

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